

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SUBREGION THIRTY-THREE

SUNBELT RENTALS, INC.1/

Employer

and

LOCAL 965 OF THE INTERNATIONAL UNION  
OF OPERATING ENGINEERS, AFL-CIO1/

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Case 33-RC-4581

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding2/, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.3/

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.4/

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:5/

All full-time and regular part-time employees, including mechanics, truck drivers, and yard personnel, employed at the Employer's Decatur, Illinois facility; but excluding secretarial and clerical employees, salesmen, counter personnel, professional employees, guards and supervisors as defined in the Act.

## DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.<sup>6/</sup> Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Local 965 of the International Union of Operating Engineers, AFL-CIO.

## LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Company**, 394 U.S. 759 (1969).<sup>7/</sup> Accordingly, it is hereby directed that within 7 days of the date of this Decision *two* copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the *33rd Subregion, Hamilton Square, 300 Hamilton Boulevard, Suite 200, Peoria, Illinois, 61602*, on or before April 26, 2001. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by May 3, 2001.

Dated April 19, 2001  
at: Peoria, Illinois



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Ralph Tremain, RD – Region 14

1/ The parties stipulated to their correct names and that all documents should be amended to reflect the proper names. The Employer's name appears as amended.

2/ I have carefully considered the record evidence, the parties' statements position on the record and the parties' briefs.

3/ The parties stipulated that the Employer is engaged in commerce within the meaning of the National Labor Relations Act and is subject to the jurisdiction of the National Labor Relations Board. The Employer, a North Carolina corporation, is engaged in the business of the rental of light and heavy construction equipment at its Decatur, Illinois facility. During the past twelve months, a representative period of time, the Employer shipped and received goods valued in excess of \$50,000 directly to customers located outside the State of Illinois. During the same period of time, the Employer had a gross volume of business in excess of \$50,000. Based upon the foregoing facts, I find the Employer herein is engaged in commerce within the meaning of the Act. The approximate number of employees in the unit found appropriate herein is eight.

4/ The parties stipulated that the Petitioner is a labor organization within the meaning of the Act, and I so find.

5/ The parties stipulated to the appropriateness of a unit of all full-time and regular part-time employees, including mechanics, truck drivers, and yard personnel, but excluding secretarial and clerical employees, salesmen, counter personnel, guards and supervisors as defined in the Act. Accordingly, I find that the above-described unit constitutes an appropriate unit for collective bargaining. The only issue raised herein is whether or not shop foreman Jim Helton is a supervisor within the meaning of the Section 2(11) the Act. The Employer contends that Helton possesses a sufficient indicia of authority as defined in Section 2(11) to be deemed a supervisor. Contrary to the Employer, the Petitioner maintains that Helton is a lead person and does not have any supervisory indicia under the Act and should be included in the unit found appropriate herein.

The record establishes that Helton possesses no supervisory indicia required by Section 2(11). Accordingly, and as discussed below, I find that Helton is not a supervisor within the meaning of Act and include him in the unit found appropriate herein.

## BACKGROUND

As indicated above, the Employer is engaged in the business of the rental of light and heavy construction equipment at its Decatur, Illinois facility. Approximately one year ago, the Employer bought the Decatur facility from Aggregate Equipment and Supply. Robert Meyer, the Profit Center Manager since late January 2001, is in charge of the Employer's operation at its Decatur, Illinois facility. As Profit Center Manager, Meyer is responsible for the operations of the Decatur facility and for the direction and supervision of the work force of approximately 13 employees at the Decatur facility. He also has the authority to hire. It is apparent from the record that Robert Meyer possesses at least one of the supervisory indicia of authority within the meaning of Section 2(11) of the Act. Accordingly, I find that Robert Meyer is a supervisor within the meaning of the Act and is to be excluded from the unit found appropriate herein.

In addition to Profit Center Manager Robert Meyer, the Decatur facility employs two salesmen, two counter personnel, two truck drivers, one yardman and five shop employees. The five employees in the shop include shop foreman Jim Helton, outside mechanics Christopher Hughes and William Gingrey and mechanics Greg Brehm and Jeff Jenkins. All of the shop mechanics have worked at the facility for 11 to 14 years. Jim Helton has the most seniority. Helton has held the position of shop foreman since December 2000. Prior to that time and during his employment by Aggregate Equipment and Supply, he was a mechanic.

## SHOP OPERATIONS

Helton is in charge of the operation of the shop. He is in charge of making sure that the equipment is up and ready and functional, schedules service calls and dispatches outside service reps to take care of customers problems, determines which mechanic is assigned to work on which piece of equipment, and is responsible for the overall functioning of the shop. The shop derives its work from a number of sources. Meyer, counter personnel, and sales people notify Helton as to the machines that need servicing or repair work so that they are ready to be sent out to customers. Some of the equipment is provided routine maintenance based on the number of hours of its operation. Service calls are also made to work on equipment needing repairs. Helton schedules these service calls and

can dispatch a road mechanic, usually either Hughes or Gingrey, to perform the work. Although Helton will make the assignment of a particular machine or piece of equipment to a particular mechanic for repairing or servicing, the determining factor in making such an assignment is usually which mechanic is available. Although the qualifications of a mechanic may sometimes enter into that consideration in conjunction with availability, all of the mechanics are highly qualified. Due to the high experience level of the mechanics, Helton does not inspect their work unless they ask him for his opinion.

Each mechanic, including Helton, is scheduled to work one-half hour overtime each day. Although the record shows that Helton can ask the shop mechanics to work overtime in addition to the one-half hour regularly scheduled, it appears that he gets the approval of the Profit Center Manager if large amounts of overtime are needed. Helton's approval of overtime does not appear necessary for work performed by the road mechanics outside of the shop. Helton is also responsible for all warranty claims and for purchasing supplies such as oils and lubrications, including determining from whom to purchase the supplies.

At the time of the hearing, all of the shop employees, including Helton, were paid on an hourly basis. Christopher Hughes was, in fact, paid more per hour than Helton. Helton shares an office with mechanic Jeff Jenkins, who does billings and orders a majority of the parts for the shop. Although each mechanic does his own paperwork, Helton does warranty claims, estimates work on equipment for customers, answers the phone and schedules service calls. Notwithstanding, Helton appears to spend at least 7 hours each day doing the same mechanical work as performed by the other mechanics. While Helton and Gingrey work from 6:30 a.m. to 4:00 p.m., the other three mechanics work from 8:00 a.m. to 5:30 p.m. All shop mechanics, including Helton, wear the same type of uniform. All of the mechanics, including Helton, also punch a time clock. Either Helton or Jenkins take the time cards to office manager Vicky Hubbard, who maintains the time records.

Helton has never hired or fired an employee and does not possess the authority to do so. Helton has never transferred an employee from one position to a higher position and has never suspended, laid-off, recalled from lay-off nor promoted any employee of the Employer. Also, he has never given another employee either a raise or bonus. Although it appears that Meyer may ask Helton

his opinion of the other mechanics, the record did not show that Helton prepares or submits any employee evaluation forms. The Profit Center Manager evaluates the mechanics. Helton meets with Meyer to hash out problems but does not attend regular supervisory meetings. Helton, the other mechanics and the other personnel at the Decatur facility attend monthly performance meetings with Meyer. At these meetings, Helton generally speaks on behalf of the shop personnel. Although only Helton has to report directly to Meyer, Meyer has an open door policy and if the shop employees have a problem they can either take it to Helton or, if they want, go directly to Meyer.

## DISCUSSION

Supervisory status under the Act depends on whether an individual possesses authority to act in the interest of the employer in the matters and in the manner specified in Section 2(11) of the Act, which defines the term “supervisor” as:

The term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet this definition, a person needs to possess only one of the specific criteria listed or the authority to effectively recommend, so long as the performance of that function is not routine but requires the use of independent judgment. See Ohio Power Co. v. NLRB, 176 F.2d 385 (6<sup>th</sup> Cir. 1949), cert. denied 338 U.S. 899 (1949). See also Queen Mary, 317 NLRB 1303 (1995).

Applying Section 2(11) to the duties and responsibilities of any given person requires that the Board determine whether the person in question has authority to use independent judgment in performing any of the functions listed in Section 2(11) and do so in the interest of management. Hydro Conduit Corp., 254 NLRB 433, 437 (1981). As pointed out in Westinghouse Electric Corp. v. NLRB, 424 F.2d 1151, 1158 (7<sup>th</sup> Cir. 1970), cited in Hydro Conduit Corp.: “the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect.”

In enacting Section 2(11), Congress emphasized its intention that only supervisory personnel vested with “genuine management prerogatives” should be considered supervisors, and not “straw bosses, leadmen, setup men and other minor supervisory employees.” See Senate Rep. No. 105, 80th Cong., 1st Sess. 4 (1947). The Board has long recognized “there are highly skilled employees whose primary function is physical participation in the production or operating processes of their employer’s plants and who incidentally direct the movements and operations of less skilled subordinate employees,” who nevertheless are not supervisors within the meaning of the Act since their authority is based on their working skills and experience. Southern Bleachery & Print Works, Inc., 115 NLRB 787, 791 (1956), enfd 257 F.2d 235 (4th Cir. 1958), cert. denied, 359 U.S. 911; Gulf Bottlers, Inc., 127 NLRB 850, n. 3, 858-861 (1960), enfd. sub nom, United Brewery Workers v. NLRB, 298 F.2d 297 (D.C. Cir. 1961).

In addition, the party seeking to exclude an individual from voting for a collective bargaining representative has the burden of establishing that the individual is ineligible to vote. Golden Fan Inn, 281 NLRB 226, 229-230 fn. 12 (1986). As stated in The Ohio Masonic Home, Inc., 295 NLRB 390, 393 (1989): “in representation proceedings such as this, the burden of proving that an individual is a supervisor rests on the party alleging that supervisory status exists.” Tucson Gas & Electric Co., 241 NLRB 181 (1979), Dickinson-Iron Agency, 283 NLRB 1029, 1034 (1987).

At the outset, it must be stated that while Jim Helton has been designated shop foreman and carries that title, it is well settled that “functions performed and the authorities possessed or exercised,” and not titles are determinative of supervisory status. D.H. OverMeyer Co., Inc., 196 NLRB 789, 791 (1972). While Helton has greater skills and responsibilities than other shop employees, I find that he lacks supervisory authority. While he does direct employees, there is no evidence that this direction is more than routine rather than direction requiring independent judgment. See Clark Machine Corporation, 308 NLRB 555 (1992). Helton routinely carries out the schedules and plans that Meyer, the sales representatives and counter people have previously developed. See McCullough Environmental Services, 306 NLRB 565 (1992). That Meyer may solicit and value opinions from Helton when he evaluates employees or makes decisions regarding hiring, firing or discipline falls short of proving that Helton makes effective recommendations about other employees. See Chicago

Metallic Corp., 273 NLRB 1677 (1985); Tucson Gas & Electric Co., 241 NLRB at 182. The Employer takes the position that although Helton does not have the authority to hire or fire, he can recommend discipline and recommend that employees be hired or fired. Notwithstanding, there was no evidence that Helton has ever recommended that an employee be hired, fired or discipline, and Helton clearly did not deem himself to possess such authority. The record does not establish that Helton possesses the authority to effectively recommend that an employee be hired, fired or discipline. To the extent that the evidence would suggest that Helton has the authority to play an effective role in the discipline of an employee, it is clear that at this point in time the ultimate decision would be made by Profit Center Manager Meyer and that Helton would, at most, serve in a reporting capacity. The record does not show that any authority possessed by Helton rose to the level of an effective recommendation. Meyer makes those judgments, and the record indicates that those are made independently. It is also clear that Helton does not play any meaningful role in the hiring process with Meyer holding the hiring authority. Finally, although Helton makes work assignments and designates overtime assignments to the four other mechanics, such assignments and directions are routine and do not involve the exercise of independent judgment as contemplated by Section 2(11) of the Act. In fact, it appears that a significant part of the department overtime hours may be worked by road mechanics and that Helton plays no role in determining the overtime work by them.

Moreover, Helton's duties and responsibilities should be evaluated in context. The department is very small, and its tasks are routine and repetitive. All mechanics are long term employees who are very qualified and require little direction. I also note that Helton is hourly paid as are other unit employees and is not paid significantly more, if any, than other experienced employees. Helton is not exempt from overtime and appears to receive the same benefits and otherwise work under the same working conditions as the other employees in the shop. Helton spends a great majority of his time performing manual work. He does not attend regular supervisory meetings or receive any supervisory training.

The Employer argues that if Helton is not a supervisor, then the shop is completely unsupervised during the majority of working hours and cites Dale Service Corp., 269 NLRB 924 (1984) in support of its argument. In Dale Service Corp., the Board found that senior operators were

supervisors within the meaning of Section 2(11). Dale Service Corp. involved a sewage treatment plant which the Respondent Employer operated on a 24-hour-per-day, 7-day per week basis. In reaching its decision the Board noted “with emphasis that during the weekday night shift and on the weekends, senior operators are the highest ranking employees present at the Respondent’s facility.” Dale Service Corp., 269 NLRB at 925, n. 8. The instant case is easily distinguishable. There was no evidence that the shop mechanics normally work hours when Meyer or the counter personnel or sales representatives, all of whom Helton considers above him, are not present. Meyer readily testified that he has an open door policy and that the mechanics can come to him with any problems. Here, the Employer’s facility does not operate on a 24-hour-per-day, 7-day-per-week basis. The record does not show that if Helton is not a supervisor, the other mechanics would be almost completely unsupervised. See North Shore Weeklies, Inc., 317 NLRB 1128, 1131 (1995).

In sum, I find that Helton performs the leadman functions of a more experienced worker in a relation to the other shop mechanics and does not possess supervisory indicia under Section 2(11) of the Act. Accordingly, I find Jim Helton not to be a supervisor, and I include him in the unit. See John N. Hansen Co, Inc., 293 NLRB 63, 64 (1989); Sanborn Telephone Co. 140 NLRB 512, 515 (1963).

6/ Your attention is directed to Part 103, Subpart B, Section 103.20 of the Board's Rules and Regulations, Series 8, as amended, which provides, inter alia, that employers shall post copies of the Board's official Notice of Election in conspicuous places at least three full working days prior to 12:01 a.m. of the day of the election, that failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed, and that an employer shall be estopped from objecting to nonposting or late posting of Notices unless it notifies the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received the Notices. You may wish to review the above rule in its entirety so that you are fully aware of its complete contents and the obligations imposed by it.

7/ The full first and last names and addresses of all eligible voters must be filed by the employer. North Macon Health Care Facility, 315 NLRB 359 (1994).

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